

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SENATE BILL 1340

AN ACT

AMENDING SECTIONS 32-3602, 33-1256 AND 33-1807, ARIZONA REVISED STATUTES;
RELATING TO ASSOCIATION LIEN FORECLOSURES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-3602, Arizona Revised Statutes, is amended to
3 read:

4 32-3602. Applicability of chapter

5 This chapter does not apply to:

6 1. A real estate broker or salesperson who is licensed in this state
7 and who, when acting as such, gives an opinion as to the price of real estate
8 for the purpose of prospective listing or sale if this opinion is not
9 referred to as an appraisal.

10 2. A natural person, a corporation through its officers or a
11 partnership through its partners that deals in that person's or its own
12 property and does not receive special compensation for the transaction.

13 3. An attorney in the performance of that person's duties as an
14 attorney.

15 4. A mortgage banker, mortgage broker or commercial mortgage banker
16 who is licensed in this state and who, when acting as such, prepares a report
17 analyzing real property if the report is not made for the primary purpose of
18 establishing the sale or market value of the property.

19 5. An individual who is otherwise subject to licensing or
20 certification by law and whose duties require appraisal of real property for
21 purposes of tax assessment.

22 6. A professional engineer or architect registered in this state or a
23 contractor or insurance producer licensed in this state who, when acting as
24 such, prepares a report analyzing real property if the report utilizes the
25 specialized knowledge of the registered professional engineer or architect or
26 the licensed contractor or insurance producer.

27 7. A property tax agent who is registered in this state and who, when
28 acting as such, prepares a report analyzing real estate if the report is made
29 for purposes of tax assessment or tax valuation of the real estate.

30 8. An individual appraising real property only for the purpose of
31 providing an opinion in a judicial proceeding or an individual providing an
32 opinion in a judicial proceeding. An individual providing an opinion under
33 the exemption of this paragraph shall not represent or imply in any report or
34 testimony that the individual testifying is licensed or certified under this
35 chapter.

36 9. AN INTERNET WEBSITE THAT GIVES A FREE OPINION AS TO THE VALUE OF
37 REAL ESTATE IF THIS OPINION IS NOT REFERRED TO AS AN APPRAISAL.

38 Sec. 2. Section 33-1256, Arizona Revised Statutes, is amended to read:

39 33-1256. Lien for assessments; priority; mechanics' and
40 materialmen's liens; applicability

41 A. The association has a lien on a unit for any assessment levied
42 against that unit from the time the assessment becomes due. The
43 association's lien for assessments, for charges for late payment of those
44 assessments, for reasonable collection fees and for reasonable attorney fees
45 and costs incurred with respect to those assessments may be foreclosed in the

1 same manner as a mortgage on real estate but may be foreclosed only if the
2 owner has been delinquent in the payment of monies secured by the lien,
3 excluding reasonable collection fees, reasonable attorney fees and charges
4 for late payment of and costs incurred with respect to those assessments, for
5 a period of one year or in the amount of one thousand two hundred dollars or
6 more, whichever occurs first. THE SALE OF PROPERTY TO SATISFY A JUDGMENT
7 UNDER THIS SECTION SHALL BE FOR AT LEAST FAIR MARKET VALUE AND ANY REMAINING
8 BALANCE SHALL BE PAID TO THE UNIT OWNER, AFTER PAYMENT OF PRIOR LIENS AND
9 ENCUMBRANCES AS OTHERWISE PROVIDED BY LAW. A FORECLOSURE SALE PRICE THAT IS
10 EQUAL TO OR HIGHER THAN THE APPRAISED VALUE AS DETERMINED BY AN APPRAISER WHO
11 IS CERTIFIED PURSUANT TO TITLE 32, CHAPTER 36, THAT IS DETERMINED BY
12 COMPARABLE MARKET SALES OR THAT IS AGREED TO IN WRITING BY THE PROPERTY OWNER
13 IS DEEMED AT FAIR MARKET VALUE. Fees, charges, late charges, monetary
14 penalties and interest charged pursuant to section 33-1242, subsection A,
15 paragraphs 10, 11 and 12, other than charges for late payment of assessments,
16 are not enforceable as assessments under this section. If an assessment is
17 payable in installments, the full amount of the assessment is a lien from the
18 time the first installment of the assessment becomes due. The association
19 has a lien for fees, charges, late charges, ~~—~~ other than charges for late
20 payment of assessments, monetary penalties or interest charged pursuant to
21 section 33-1242, subsection A, paragraphs 10, 11 and 12 after the entry of a
22 judgment in a civil suit for those fees, charges, late charges, monetary
23 penalties or interest from a court of competent jurisdiction and the
24 recording of that judgment in the office of the county recorder as otherwise
25 provided by law. The association's lien for monies other than for
26 assessments, for charges for late payment of those assessments, for
27 reasonable collection fees and for reasonable attorney fees and costs
28 incurred with respect to those assessments may not be foreclosed and is
29 effective only on conveyance of any interest in the real property.

30 B. A lien for assessments, for charges for late payment of those
31 assessments, for reasonable collection fees and for reasonable attorney fees
32 and costs incurred with respect to those assessments under this section is
33 prior to all other liens, interests and encumbrances on a unit except:

34 1. Liens and encumbrances recorded before the recordation of the
35 declaration.

36 2. A recorded first mortgage on the unit, a seller's interest in a
37 first contract for sale pursuant to chapter 6, article 3 of this title on the
38 unit recorded prior to the lien arising pursuant to subsection A of this
39 section or a recorded first deed of trust on the unit.

40 3. Liens for real estate taxes and other governmental assessments or
41 charges against the unit.

42 C. Subsection B of this section does not affect the priority of
43 mechanics' or materialmen's liens or the priority of liens for other
44 assessments made by the association. The lien under this section is not
45 subject to chapter 8 of this title.

1 D. Unless the declaration otherwise provides, if two or more
2 associations have liens for assessments created at any time on the same real
3 estate, those liens have equal priority.

4 E. Recording of the declaration constitutes record notice and
5 perfection of the lien for assessments, for charges for late payment of those
6 assessments, for reasonable collection fees and for reasonable attorney fees
7 and costs incurred with respect to those assessments. Further recordation of
8 any claim of lien for assessments under this section is not required.

9 F. A lien for unpaid assessments is extinguished unless proceedings to
10 enforce the lien are instituted within three years after the full amount of
11 the assessments becomes due.

12 G. This section does not prohibit actions to recover sums for which
13 subsection A of this section creates a lien or does not prohibit an
14 association from taking a deed in lieu of foreclosure.

15 H. A judgment or decree in any action brought under this section shall
16 include costs and reasonable attorney fees for the prevailing party.

17 I. The association on written request shall furnish to a lienholder,
18 escrow agent, unit owner or person designated by a unit owner a statement
19 setting forth the amount of unpaid assessments against the unit. The
20 statement shall be furnished within fifteen days after receipt of the request
21 and the statement is binding on the association, the board of directors and
22 every unit owner if the statement is requested by an escrow agency that is
23 licensed pursuant to title 6, chapter 7. Failure to provide the statement to
24 the escrow agent within the time provided for in this subsection shall
25 extinguish any lien for any unpaid assessment then due.

26 J. The association shall record in the office of the county recorder
27 in the county in which the condominium is located a notice stating the name
28 of the association or designated agent or management company for the
29 association, the address for the association and the telephone number of the
30 association or its designated agent or management company. The notice shall
31 include the name of the condominium community, the date of the recording and
32 the recorded instrument number or book and page for the main document that
33 constitutes the declaration. If an association's address, designated agent
34 or management company changes, the association shall amend its notice or
35 record a new notice within ninety days after the change.

36 K. Notwithstanding any provision in the condominium documents or in
37 any contract between the association and a management company, unless the
38 member directs otherwise, all payments received on a member's account shall
39 be applied first to any unpaid assessments, for unpaid charges for late
40 payment of those assessments, for reasonable collection fees and for unpaid
41 attorney fees and costs incurred with respect to those assessments, in that
42 order, with any remaining amounts applied next to other unpaid fees, charges
43 and monetary penalties or interest and late charges on any of those amounts.

44 L. This section does not apply to timeshare plans or associations that
45 are subject to chapter 20 of this title.

1 Sec. 3. Section 33-1807, Arizona Revised Statutes, is amended to read:
2 33-1807. Lien for assessments; priority; mechanics' and
3 materialmen's liens

4 A. The association has a lien on a unit for any assessment levied
5 against that unit from the time the assessment becomes due. The
6 association's lien for assessments, for charges for late payment of those
7 assessments, for reasonable collection fees and for reasonable attorney fees
8 and costs incurred with respect to those assessments may be foreclosed in the
9 same manner as a mortgage on real estate but may be foreclosed only if the
10 owner has been delinquent in the payment of monies secured by the lien,
11 excluding reasonable collection fees, reasonable attorney fees and charges
12 for late payment of and costs incurred with respect to those assessments, for
13 a period of one year or in the amount of one thousand two hundred dollars or
14 more, whichever occurs first. **THE SALE OF PROPERTY TO SATISFY A JUDGMENT**
15 **UNDER THIS SECTION SHALL BE FOR AT LEAST FAIR MARKET VALUE AND ANY REMAINING**
16 **BALANCE SHALL BE PAID TO THE UNIT OWNER, AFTER PAYMENT OF PRIOR LIENS AND**
17 **ENCUMBRANCES AS OTHERWISE PROVIDED BY LAW. A FORECLOSURE SALE PRICE THAT IS**
18 **EQUAL TO OR HIGHER THAN THE APPRAISED VALUE AS DETERMINED BY AN APPRAISER WHO**
19 **IS CERTIFIED PURSUANT TO TITLE 32, CHAPTER 36, THAT IS DETERMINED BY**
20 **COMPARABLE MARKET SALES OR THAT IS AGREED TO IN WRITING BY THE PROPERTY OWNER**
21 **IS DEEMED AT FAIR MARKET VALUE.** Fees, charges, late charges, monetary
22 penalties and interest charged pursuant to section 33-1803, other than
23 charges for late payment of assessments, are not enforceable as assessments
24 under this section. If an assessment is payable in installments, the full
25 amount of the assessment is a lien from the time the first installment of the
26 assessment becomes due. The association has a lien for fees, charges, late
27 charges, ~~—~~ other than charges for late payment of assessments, monetary
28 penalties or interest charged pursuant to section 33-1803 after the entry of
29 a judgment in a civil suit for those fees, charges, late charges, monetary
30 penalties or interest from a court of competent jurisdiction and the
31 recording of that judgment in the office of the county recorder as otherwise
32 provided by law. The association's lien for monies other than for
33 assessments, for charges for late payment of those assessments, for
34 reasonable collection fees and for reasonable attorney fees and costs
35 incurred with respect to those assessments may not be foreclosed and is
36 effective only on conveyance of any interest in the real property.

37 B. A lien for assessments, for charges for late payment of those
38 assessments, for reasonable collection fees and for reasonable attorney fees
39 and costs incurred with respect to those assessments under this section is
40 prior to all other liens, interests and encumbrances on a unit except:

41 1. Liens and encumbrances recorded before the recordation of the
42 declaration.

43 2. A recorded first mortgage on the unit, a seller's interest in a
44 first contract for sale pursuant to chapter 6, article 3 of this title on the

1 unit recorded prior to the lien arising pursuant to subsection A of this
2 section or a recorded first deed of trust on the unit.

3 3. Liens for real estate taxes and other governmental assessments or
4 charges against the unit.

5 C. Subsection B of this section does not affect the priority of
6 mechanics' or materialmen's liens or the priority of liens for other
7 assessments made by the association. The lien under this section is not
8 subject to chapter 8 of this title.

9 D. Unless the declaration otherwise provides, if two or more
10 associations have liens for assessments created at any time on the same real
11 estate those liens have equal priority.

12 E. Recording of the declaration constitutes record notice and
13 perfection of the lien for assessments, for charges for late payment of
14 assessments, for reasonable collection fees and for reasonable attorney fees
15 and costs incurred with respect to those assessments. Further recordation of
16 any claim of lien for assessments under this section is not required.

17 F. A lien for an unpaid assessment is extinguished unless proceedings
18 to enforce the lien are instituted within three years after the full amount
19 of the assessment becomes due.

20 G. This section does not prohibit:

21 1. Actions to recover amounts for which subsection A of this section
22 creates a lien.

23 2. An association from taking a deed in lieu of foreclosure.

24 H. A judgment or decree in any action brought under this section shall
25 include costs and reasonable attorney fees for the prevailing party.

26 I. On written request, the association shall furnish to a lienholder,
27 escrow agent, unit owner or person designated by a unit owner a statement
28 setting forth the amount of any unpaid assessment against the unit. The
29 association shall furnish the statement within fifteen days after receipt of
30 the request, and the statement is binding on the association, the board of
31 directors and every unit owner if the statement is requested by an escrow
32 agency that is licensed pursuant to title 6, chapter 7. Failure to provide
33 the statement to the escrow agent within the time provided for in this
34 subsection shall extinguish any lien for any unpaid assessment then due.

35 J. The association shall record in the office of the county recorder
36 in the county in which the planned community is located a notice stating the
37 name of the association or designated agent or management company for the
38 association, the address for the association and the telephone number of the
39 association or its designated agent or management company. The notice shall
40 include the name of the planned community, the date of the recording and the
41 recorded instrument number or book and page for the main document that
42 constitutes the declaration. If an association's address, designated agent
43 or management company changes, the association shall amend its notice or
44 record a new notice within ninety days after the change.

1 K. Notwithstanding any provision in the community documents or in any
2 contract between the association and a management company, unless the member
3 directs otherwise, all payments received on a member's account shall be
4 applied first to any unpaid assessments, for unpaid charges for late payment
5 of those assessments, for reasonable collection fees and for unpaid attorney
6 fees and costs incurred with respect to those assessments, in that order,
7 with any remaining amounts applied next to other unpaid fees, charges and
8 monetary penalties or interest and late charges on any of those amounts.